IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 887 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGHUBHAI KARMSHIBHAI BHARWAD

Versus

POPAT CHIKABHAI BHARWAD

Appearance:

1. Special Criminal Application No. 887 of 2004

MR MUKTESH V PATEL for Petitioner No. 1

MR JITENDRA BHARVAD for Petitioner No. 1

MR ANIL N MEHTA for Petitioner No. 1

MR PRAMUKH G DATT for Petitioner No. 1

..... for Respondent No. 1-7

MR AY KOGJE, APP for Respondent No. 8

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 13/09/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Muktesh Patel for petitioner and ld. APP Mr. AY Kogje for respondent No.8 State.

2. This Spl.Cri. Application is filed by the petitioner challenging the order passed by ld. JMFC, Dholka dated 1.7.2004 as well as the order dated 12.08.2004 passed by ld. Addl. Sessions Judge, Ahmedabad (Rural) confirming the order passed by ld. JMFC, Dholka rejecting the application to add charge of Sec.307, 120-B of the Indian Penal Code in Criminal Case No.606/1993.

3. Having considered the order passed by the ld. Addl. Sessions Judge, I do not find any merits in this petition. Ld. Trial Judge has rightly not accepted that the charge under Sec.307 R/w Sec.120-B of Indian Penal Code is required to be added. Considering the facts emerging from the complaint and looking to the nature of injury sustained by the prosecution witnesses, it was not even otherwise possible for the police to chargesheet the accused persons for the offence punishable under Sec.307 of Indian Penal Code. It appears that some quarrel had occurred where one of the prosecution witnesses had sustained grave injury by dharia and, therefore, the accused have been chargesheeted and in turn change by the trial Court for the offence punishable under Sec.326 R/w other sections mentioned in the charge, came to be framed by the ld. JMFC.

4. One of the grievance expressed by ld. counsel Mr. Patel for the petitioner is that the charge has not been meticulously framed by the ld. JMFC, but it seems that till date, the ld. APP appearing in the matter has not prayed for any addition or alteration in charge. It is true that normally, distinct charge for distinct offence committed should be framed so that evidence can be led by the prosecution accordingly and ld. counsel appearing for the accused also can cross-examine the witnesses accordingly i.e. in light of the charge framed against each of the accused. But this petition has no concern with the alleged infirmity in the charge framed and for that purpose, the petitioner can approach the ld. JMFC, if he so desires, through ld. PP.

5. The present petitioner, it seems, has filed this petition mainly because he has been fastened with the liability to pay costs of Rs.500/ by the ld. Addl. Sessions Judge while disposing of Cri. Rev. Application filed by the petitioner- complainant against the order passed by ld. JMFC dated 1.7.2004 below Exh.36. It is true that the petitioner complainant had no locus before

the Court of Sessions because the case is instituted on a police report and the State had not moved the Court of Sessions. It appears that the State had no grievance at relevant point of time against the order passed by the ld. JMFC rejecting the application preferred by the present petitioner complainant. So, ld. Addl. Sessions Judge must have felt that the complainant ought not to have approached the Court by preferring Cri. Rev. Application having no locus, but solely on this ground, at least, costs of Rs.500/ ought not to have been imposed on the complainant by the ld. Addl. Sessions Judge. In criminal justice system, the accused and/or the complainant, except in grave cases, are normally not fastened with the liability to pay costs. This court is in agreement to that extent with ld. counsel Mr. Patel for the petitioner that at least the ld. Addl. Sessions Judge ought not to have imposed costs of Rs.500/. So, the petition qua this submission can be accepted and the order passed by ld. ..... Addl. Sessions Judge can be corrected exercising supervisory jurisdiction especially when the complainant is having a particular socio-economic background and poor educational qualification. The criminal court when is inclined to impose costs in a given set of circumstances, then all such criterias are required to be looked into. Ld. APP Mr. Kogje has also fairly accepted that without assigning reasons and without entering into merits, order directing the petitioner complainant to pay costs of Rs.500/ can be quashed and set aside.

6. In view of above, without entering into the merits and as ld. APP Mr. Kogje has not pressed for reasons, the impugned order dated 12.08.2004 passed by ld. Addl. Sessions Judge, Ahmedabad (Rural) in Cri. Rev. Application No.65/2004 in so far as imposing costs of Rs.500/ on the petitioner complainant, is hereby quashed and set aside and the petitioner complainant is exonerated from the liability to pay costs of Rs.500/. The rest of the impugned order passed by ld. Addl. Sessions Judge is hereby confirmed.

7. The present Spl.Cri. Application is dismissed on merits on all other counts subject to modification of the impugned order passed by ld.Addl. Sessions Judge as aforesaid, at the admission stage.

[C.K. BUCH, J]

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